

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

OP(KAT).No. 80 of 2013 (Z)

AGAINST THE ORDER IN TA 2293/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 28-11-2012

PETITIONER:

SABU JOSEPH A J,
PROBATION OFFICER GRADE 1, DISTRICT PROBATION OFFICE
COURT CAMPUS, ALAPPUZHA -1.

BY ADVS. SRI. S. P. ARAVINDAKSHAN PILLAY
SMT. N. SANTHA
SRI. K. A. BALAN
SRI. PETER JOSE CHRISTO
SRI. S. A. ANAND
SMT. K. N. REMYA

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
SOCIAL WELFARE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001
2. DIRECTOR OF SOCIAL WELFARE
DIRECTOR OF SOCIAL WELFARE
THIRUVANANTHAPURAM 695 033.

BY SR. GOVERNMENT PLEADER SRI P. M. SANEER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 27.11.2014, ALONG WITH OPKAT. 1368/2013, THE COURT ON 25-02-2015,
DELIVERED THE FOLLOWING:

PETITIONER(S) EXHIBITS

- EXHIBIT P1. TRUE COPY OF TA NO.2293/2012 OF THE KERALA ADMINISTRATIVE TRIBUNAL.
- EXHIBIT P2. TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN TA 2293/2012.
- EXHIBIT P3. TRUE COPY OF THE ORDER DATED 28.11.2012 IN TA 2293/2012 OF THE KERALA ADMINISTRATIVE TRIBUNAL.

RESPONDENTS' EXHIBITS : NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANTONY DOMINIC & ANIL K.NARENDRA, JJ.

O.P.(KAT)Nos.80 & 1368 of 2013

DATED THIS THE 25th DAY OF FEBRUARY, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The petitioner in O.P. (KAT) No.80 of 2013 is the 2nd applicant in T.A.No.2293/2012 on the file of the Kerala Administrative Tribunal, Thiruvananthapuram, and the petitioner in O.P. (KAT) No.1368 of 2013 is the 1st applicant in that T.A.

2. The petitioners entered service as Probation Officers Grade II in the Department of Social Welfare on 5/4/1995 and 20/3/1995 respectively. They were promoted as Child Development Project Officers on 16/7/1998 and 7/6/1999 respectively. They were further promoted as District Probation Officers Grade I on 6/4/2000 and 12/4/2004 respectively and are continuing in that post.

3. The petitioners had approached this Court in W.P.(C) No.20358 of 2010, seeking a declaration that the provisions of the Special Rules for the Kerala Social Welfare State Service, 2010, relating to categories 4, 5 and 6 to the extent they are at variance with the provisions of the Special Rules for the Kerala Social

Welfare State Service, 1992, and against the provisions of the Probation of Offenders Act, 1958, and the Kerala Probation of Offenders Rules, 1960, are unconstitutional and void and hence unenforceable. They also sought a writ of mandamus commanding the respondents not to enforce the provisions of the Special Rules for the Kerala Social Welfare State Service, 2010, relating to categories 4, 5 and 6 to the extent they are at variance with the provisions of the Special Rules for the Kerala Social Welfare State Service, 1992, and against the provisions of the Probation of Offenders Act, 1958, and the Kerala Probation of Offenders Rules, 1960.

4. On the formation of the Kerala Administrative Tribunal at Thiruvananthapuram, the above Writ Petition was transferred to the Tribunal and was re-numbered as T.A.No.2293 of 2012. The Tribunal by order dated 28/11/2012, dismissed T.A.No.2293 of 2012 holding that the provisions of the Special Rules for the Kerala Social Welfare State Service, 2010 cannot be described as manifestly unjust, arbitrary or unequal in its operation warranting condemnation of the same as beyond the rule making power of

the State Government. It is aggrieved by the said order passed by the Tribunal, the petitioners are before us in these O.P.(KAT)s.

5. We heard the arguments of the learned counsel appearing for the petitioner in O.P.(KAT)No.80/2013, the learned counsel for the petitioner in O.P.(KAT)No.1368/2013 and also the learned Government Pleader appearing for the respondents.

6. As per the Special Rules for the Kerala Social Welfare State Service, 1992 (hereinafter referred to as the Special Rules of 1992), the Kerala Social Welfare Service consisted of nine categories of posts. Category No.4 was Regional Probation Officer/Regional Assistant Director/Assistant Director of Social Welfare. Category No.5 was District Social Welfare Officer/Inspector, Special Nutrition Programme Grade I. Category No.6 was District Probation Officer Grade I. Category No.7 was Child Development Project Officer, Integrated Child Development Services Scheme/Program Officer/Project Officer, Upgraded Special Nutrition Programme.

7. Going by the Special Rules of 1992, the method of appointment with effect from 16/9/1985 to the category of

Regional Probation Officers/Regional Assistant Director/Assistant Director of Social Welfare is by promotion from categories 5 and 6 only and in the absence of qualified candidates for promotion, by direct recruitment. Therefore, the petitioners who are District Probation Officers Grade I could have aspired for promotion to the category of Regional Probation Officer/Regional Assistant Director/Assistant Director of Social Welfare, based on their ranking in the common list of categories 5 and 6 prepared on the basis of the date of appointment to the respective categories, according to seniority.

8. While so, the Government of Kerala, in supersession of the Special Rules of 1992, has issued the Special Rules for the Kerala Social Welfare State Service, 2010 (hereinafter referred to as the Special Rules of 2010). The Special Rules of 2010 also consist of nine categories of posts. But in the said Special Rules category No.4 is Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare. Category No.5 is District Social Welfare Officer and category No.6 is Probation Officer Grade I. As per the Special Rules of 2010, category No.5

District Social Welfare Officer is the promotion post of category No.6 Probation Officer Grade I and also category Nos. 7, 8 and 9. The post of Social Welfare Officer can also be filled up by appointment by transfer from Senior Superintendents in the Social Welfare Department. Going by Note (i) under category No.5, a ratio of 1:10:3 shall be maintained between (i) category No.6, (ii) category No.7 and (iii) category Nos.8 & 9 and Senior Superintendent and equated posts in the Social Welfare Department for promotion/transfer appointment to the post of District Social Welfare Officer, from among qualified persons in those categories.

9. The petitioners would contend that, the provisions contained in the Special Rules of 2010, prescribing method of appointment to category No.4 Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare and to category No.6 Probation Officer Grade I are against the provisions of the Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act') and also the rules made thereunder.

10. As per Section 2(b) of the Act, 'Probation Officer'

means an officer appointed to be a probation officer or recognised as such under Section 13 of the said Act. Going by Sub-section (1) of Section 13, a probation officer under the said Act shall be a person appointed to be a Probation Officer by the State Government or recognised as such by the State Government; or a person provided for this purpose by a society recognised in this behalf by the State Government; or in any exceptional case, any other person who in the opinion of the Court, is fit to act as a Probation Officer in the special circumstances of the case. As per Sub-section (2) of Section 13 of the Act, a Court which passes an order under Section 4 or the District Magistrate of the district in which the offender for the time being resides may, at any time, appoint any Probation Officer in the place of the person named in the supervision order. Sub-section (3) of Section 13 of the Act states that, a Probation Officer, in the exercise of his duties under the said Act, shall be subject to the control of the District Magistrate of the district, in which the offender resides for the time being.

11. Section 14 of the Act deals with the duties of Probation

Officer. As per Section 14 of the Act, a Probation Officer shall, subject to such conditions and restrictions, as may be prescribed, inquire, in accordance with any directions of a Court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the Court in determining the most suitable method of dealing with him and submit reports to the Court; supervise probationers and other persons placed under his supervision and, where necessary, endeavor to find them suitable employment; advise and assist offenders in the payment of compensation or costs ordered by the Court; advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under Section 4; and perform such other duties as may be prescribed.

12. As per Section 17 of the Act, the Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of the Act, and going by Sub-section (2) such rules may provide for appointment of Probation Officers, the terms and conditions of their service and the area within which they are to exercise

jurisdiction; duties of Probation Officers under the Act and the submission of reports by them; etc. In exercise of that power, the Government of Kerala has issued the Kerala Probation of Offenders Rules, 1960 (hereinafter referred to as 'the Rules'). Going by Clause (c) to Rule 1 of the Rules, 'District Probation Officer' means the salaried Probation Officer in charge of the work of probation in the whole district or in a part of a district, as per jurisdiction prescribed from time to time. 'Regional Probation Officer' means an officer appointed by the State Government to control, guide and supervise the work of Probation Officers (salaried and honorary) within his jurisdiction. Rule 3 of the Rules deals with appointment of Chief Probation Superintendent and the duties and functions attached to that post. Going by Rule 3, the State Government shall appoint a Chief Probation Superintendent and subject to the control and supervision of the Inspector-General, the Chief Probation Superintendent shall administer the work of probation throughout the State and shall direct, supervise and shall be responsible for the proper performance of the work of probation. Similarly, the Rules

contemplate appointment of Regional Probation Officer for the effective implementation of the Probation System throughout the State. Rule 6 of the Rules deals with Probation Officers. As per Sub-rule (1) of Rule 6, the State Government shall appoint as many Probation Officers (salaried and honorary) in each district as may be deemed necessary. Going by Sub-rule (2) the headquarters of a District Probation Officer shall ordinarily be the headquarters of the district. The qualifications and method of appointment for the post of the Probation Officer and other higher posts are prescribed in the Rules. Similarly, the powers and duties of such officers are also prescribed in the Rules, which make it abundantly clear that these officers are appointed for the effective implementation of the Probation System throughout the State, and they discharge their powers and duties under the overall supervision of the Inspector-General.

13. The tenor of the contentions raised in counter affidavit filed by the 1st respondent in W.P.(C)No.20385/2010 is that, the provisions of the Probation of Offenders Act and the Kerala Probation of Offenders Rules are being implemented in the State

mainly through the Jails Department, which comes under the Home Department. Since the Social Welfare Department is not the sole agency for the implementation of Probation System in the State, all the posts contemplated under the Probation of Offenders Act are not provided in the Social Welfare Department and the only posts available are that of Probation Officer Grade I under the Kerala Social Welfare State Service and Probation Officer Grade I under the Kerala Social Welfare Subordinate Service.

14. The Probation of Offenders Act was enacted to provide for release of offenders on probation or after due admonition and for matter connected therewith. As we have already noticed, the post of Probation Officer and other higher posts created under the said Act and the Kerala Probation of Offenders Rules are for the effective implementation of the Probation System throughout the State. The powers and duties of such officers are prescribed in the Rules, so also the qualifications and method of appointment for these posts. The petitioners have no case that, the Social Welfare Department is the only agency for the

implementation of Probation System in the State. When the provisions of the Probation of Offenders Act and the Kerala Probation of Offenders Rules are being implemented in the State mainly through the Jails Department, which comes under the Home Department, the petitioners cannot insist that, all the posts contemplated under the Probation of Offenders Act should be provided in the Social Welfare Department itself. Merely for the reason that, at the time of formation of the Social Welfare Department certain posts of Probation Officers were shifted to that Department by Exhibit P4 Government order dated 9/9/1975, the petitioners cannot insist that the Government should retain such posts in that Department itself. The rule making authority in its wisdom has thought it unnecessary to have all such posts within the Special Rules for the Kerala Social Welfare State Service. Such an action of the rule making authority will not in any manner contravene the provisions of the Probation of Offenders Act or the Kerala Probation of Offenders Rules. It will also not amount to amending the provisions of the Kerala Probation of Offenders Rules. Therefore, the contention of

the petitioners, mainly relying on Sub-section (1) of Section 17 of the Act is absolutely untenable and can only be rejected.

15. We also notice that, the Special Rules for the Kerala Social Welfare State Service are framed under Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968. The said Act was enacted by the State Legislature in exercise of its powers conferred under Article 309 of the Constitution of India, read with Entry 41 of list II of the Seventh Schedule to the Constitution, which authorises the State Government to frame service conditions of the employees serving under it. Going by Sub-section (1) of Section 2 of the Act, the Government may make rules either prospectively or retrospectively to regulate the recruitment and conditions of service of persons appointed, to public service and posts in connection with the affairs of the State. Section 4 of the said Act contains a non-obstante clause, which reads thus;

"4. Act and Rules thereunder to apply to certain persons notwithstanding anything in the Industrial Disputes Act or any other law:- Notwithstanding anything contained in Chapter V-A or in any other provision of the Industrial Disputes Act, 1947

(Central Act 14 of 1947) or in any other law for the time being in force, or in any judgment, decree or order of any court, the appointment of any person to any public service or post in connection with the affairs of the State of Kerala and the conditions of service (including termination of service) of any person appointed to any such service or post shall be governed by the provisions of this Act and the Rules made or deemed to have been made thereunder.”

16. Therefore, Section 4 of the Kerala Public Services Act, 1968, makes it expressly clear that the provisions of the Rules framed under the said Act will prevail over the provisions of any other law for the time being in force. Section 4 was incorporated in the Kerala Public Services Act by the Amendment Act 4 of 1984, with effect from 1/10/1981. The said Amendment Act received the assent of the President on 5/1/1984 and was notified in the Official Gazette on 7/1/1984. The Probation of Offenders Act, 1958 is enacted by the Central Government under Entry 2 of List III of the Seventh Schedule to the Constitution. In such circumstances, Section 4 of the Kerala Public Services Act, 1968 will override the provisions of the Probation of Offenders Act, 1958. If that be so, the Special Rules for the Kerala Social

Welfare State Service framed under Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 will prevail over the Rules framed under the Probation of Offenders Act, 1958, by virtue of Clause (2) of Article 254 of the Constitution of India. Further, the Probation of Offenders Act is a special legislation concerning release of offenders on probation and the said Act is a general legislation concerning the framing of Rules in relation to the service conditions of Probation Officers and others appointed for the effective implementation of the Probation System throughout the State. In that view of the matter as well, the provisions of the Kerala Probation of Offenders Rules, 1960 will have to yield to the provisions of the Special Rules for the Kerala Social Welfare State Service framed under Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968. Therefore, we find that the Tribunal has rightly repelled the attempt made by the petitioners to impugn the Special Rules of 2010, relying on the provisions of the Probation of Offenders Act and the Kerala Probation of Offenders Rules.

17. The petitioners would further contend that, going by

the Special Rules of 2010, a District Probation Officer can get promotion to category No.4 Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare only after getting promotion as District Social Welfare Officer. Further, because of the ratio prescribed in the said Special Rules, only when 14 vacancies are there one Probation Officer Grade I can get promotion to the category of District Social Welfare Officer. Therefore, the possibility of a Probation Officer Grade I getting promoted to category No.4 is remote. According to the petitioners, the Special Rules of 1992 was replaced by the Special Rules of 2010 for the purpose of rectifying certain anomaly. The District Social Welfare Officers had a grievance that, the District Probation Officers Grade I were stealing a march over them in the matter of promotion to the category of Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare. But, to redress their grievance it was sufficient to introduce a ratio between District Social Welfare Officers and the District Probation Officers in the matter of promotion. Since the strength of District Social Welfare Officers is 14 and that of the Probation

Officers Grade I is 17, the prescription of a ratio of 1:1 between these categories would have been sufficient to redress the grievance of the District Social Welfare Officers.

18. The respondents would contend that the Special Rules of 2010 was brought out in order to rectify certain major anomalies in the Special Rules of 1992. As per the Special Rules of 1992, category No.5 District Social Welfare Officer/Inspector Special Nutrition Programme Grade I and category No.6 District Probation Officer Grade I were the feeder category for promotion to category No.4 Regional Probation Officer/Regional Assistant Director/Assistant Director of Social Welfare. As per Note (vi) to Rule 28(b)(i)(7) of the Kerala State and Subordinate Service Rules, 1958 (hereinafter referred to as 'the KS&SSR'), when there are more than one feeder category carrying different scales of pay, they shall be shown in separate lists and persons in a lower scale of pay shall be appointed only after appointing all persons on a higher scale of pay, unless the Special Rules prescribe a ratio or any special order of preference for each feeder category. Further, going by Note (vii) to Rule 28(b)(i)(7)

of the KS&SSR, when the posts in the feeder categories are on the same scale of pay and there is no fixed ratio, appointment shall be made in accordance with their seniority in the feeder category, the seniority being determined by the date of the order of first appointment to that particular category, class or grade.

19. Now, as per the Special Rules of 2010, the feeder category for category No.4 Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare is Category No.5 District Social Welfare Officer. The feeder category for category No.5 District Social Welfare Officer is category Nos.6 Probation Officer Grade I, category No.7 Programme Officer/Child Development Project Officer (ICDS Scheme), category No.8 Superintendent Welfare Institution Grade I/Deputy Superintendent-cum-Headmaster Grade I/Deputy Superintendent Grade I/Regional Dowry Prohibition Officer, and Category No.9 Superintendent, Home for Mentally Deficient Children/Prathyasha Bhavan (Home for Mentally Deficient Adults). Therefore, as per the Special Rules of 2010, a District Probation Officer Grade I can aspire promotion to the post of Regional Assistant Director of

Social Welfare/Assistant Director of Social Welfare only after getting promotion to category No.5 District Social Welfare Officer. It is pertinent to note that, even under the Special Rules of 1992, category No.4 Regional Probation Officer/Regional Assistant Director of Social Welfare/Assistant Director of Social Welfare was not exclusively reserved for category No.6 District Probation Officer Grade I and District Probation Officer Grade I was only one among the feeder categories to category No.4.

20. The respondents would further contend that, the ratio of 1:10:3 prescribed in the Special Rules of 2010 for category No.5 District Social Welfare Officer is according to the sanctioned cadre strength of the feeder categories. Going by the counter affidavit filed on behalf of the 1st respondent, the sanctioned cadre strength of category No.5 District Social Welfare Officer is 14, category No.6 District Social Welfare Officer is 17, category No.7 Programme Officer/Child Development Project Officer (ICDS Scheme) is 179 and category No.8 Superintendent Welfare Institution Grade I/Superintendent (Juvenile Justice) Grade I/etc. is 5. Therefore, we find considerable force in the contention

raised on behalf of the respondents that, it was taking into consideration the sanctioned cadre strength of each category, the ratio between (i) category No.6, (ii) category No.7, and (iii) category Nos.8 and 9 has been fixed as 1:10:3 in the Special Rules of 2010 for promotion/transfer appointment to category No.5 District Social Welfare Officer, in order to ensure equal opportunity to all feeder categories. In such circumstances, the contention raised by the learned counsel for the petitioner in O.P. (KAT)No.1386/2013, relying on the judgments of the Apex Court in **S.Ramesha v. State of Karnataka (1995 (Supp.3) SCC 260)** and **Ashutosh Gupta v. State of Rajasthan (2002 (4) SCC 34)** that, there is no rationale or reasonableness for introduction of the Special Rules of 2010 is absolutely untenable and it can only be rejected.

21. In **Indravadan H.Shah v. State of Gujarat (1986 (Supp.) SCC 254)** relied on by the learned counsel for the petitioner in O.P.(KAT)No.1386/2013, the Apex Court was dealing with the amendment made to Rule 6(4)(i) and Rule 6(4)(iii)(a) of the Gujarat Judicial Service Recruitment Rules, 1961, which

provided that a Civil Judge (Senior Division) after completing 48 years of age will not be eligible for consideration for promotion to the post of Assistant Judge. Though the post of Assistant Judge as well as the post of District Judge belong to the senior branch of Gujarat Judicial Service, yet in the higher cadre of District Judge no such age bar has been introduced. The Apex Court held that, there is obviously no rationale, nor any reasonableness for introduction of such an age bar and the rule is therefore, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Therefore, the aforesaid judgment of the Apex Court stands on a different factual matrix altogether.

22. As rightly noticed by the Tribunal, the Government have decided to frame new rules taking into account the views of various sections, as there was widespread complaints that the Probation Officers were getting accelerated promotions. Therefore, the Government have decided to apportion the posts in the higher cadre with reference to the cadre strength of the respective groups in the feeder category and an equitable distribution of the available posts was also made in the Special

Rules of 2010. The mere reason that the petitioners have lost some advantages which they were enjoying earlier under the Special Rules of 1992 is not a valid ground to impugn the Special Rules of 2010 as violative of Articles 14 and 16 of the Constitution of India. In **Pankajashy v. George Mathew (1987 (2) KLT 723)** a Division Bench of this Court has held that, the rule made under a statute by an authority delegated for the purpose can be challenged on the ground that it is ultra vires of the Act; it is opposed to the fundamental rights; and it is opposed to other plenary laws. To ascertain whether a rule is ultra vires of the Act, the Court can go into the question whether it contravenes expressly or impliedly any of the provisions of the statute; whether it achieves the intent and object of the Act; and whether it is 'unreasonable' to be manifestly arbitrary, unjust or partial implying thereby want of authority to make such rules. In Exhibit P3 order dated 28/11/2012 in T.A.No.2293/2012, the Tribunal came to the conclusion that, none of the grounds enumerated in **Pankajakshy's case (supra)** is available for attacking the Special Rules of 2010.

23. As rightly held by the Tribunal, the provisions of the Special Rules of 2010 cannot be described as manifestly unjust, arbitrary or unequal in its operation warranting condemnation of the same as beyond the Rule making power of the State Government.

For the reasons stated above, we find absolutely no grounds to interfere with the conclusions made by the Tribunal in the impugned order. In the result, these O.P.(KAT)s fail and they are dismissed.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn